IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.84 OF 2007
IN
WRIT PETITION NO.2321 OF 2003

Sharayu Bhimrao Mohite ..Appellant.
Vs.
Khadi & Village Industries Commission & Anr. ..Respondents.
....
Shri N.M. Ganguli for the Appellant.
....

CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

9th March, 2007.

P.C. :

Heard.

This Appeal arises from the judgment dated 14th July, 2006 passed by the Learned Single Judge in Writ Petition 2321 of 2003. The Learned Single Judge by the impugned order has partly set aside the award which related to grant of backwages to the Appellant. The learned advocate for the Appellant stated that once the Tribunal in its discretion has granted 50% of the backwages, the Learned Single Judge was not justified in interfering with the finding in that regard and setting aside the grant

of 50% of the backwages. The impugned order apparently discloses that the Learned Single Judge on consideration of the entire material on record, was of the view that the Tribunal had not referred to any evidence which could justify the grant of 50% of the backwages. It is undisputed fact that the Appellant in the course of recording of evidence had nowhere stated that she was not gainfully employed during the relevant period or that she had no source of livelihood after her services were terminated. It is well settled law that burden lies on the employee to establish that after the termination of the services, he or she was not gainfully employed so as to claim backwages on obtaining the order of reinstatement in service. The law in that regard being well settled, no fault can be found with the impugned order wherein the Learned Single Judge found that the Appellant failed to establish that she was not gainfully employed during the relevant period or that she had no source of livelihood after the termination of services. There is no case made out for interference. Hence, the Appeal is rejected.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)